

DEPARTMENT OF HEALTH

Repeal of Chapter 11-175 and
Adoption of Chapter 11-175.1
Hawaii Administrative Rules

()

SUMMARY

1. Chapter 11-175, Hawaii Administrative Rules, entitled "Mental Health and Substance Abuse System", is repealed.
2. Chapter 11-175.1, Hawaii Administrative Rules, entitled "Mental Health and Substance Use System", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 175

MENTAL HEALTH AND SUBSTANCE ABUSE SYSTEM

REPEALED

§§11-175-1 to 11-175-80 Repealed. [R]

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 175.1

MENTAL HEALTH AND SUBSTANCE USE SYSTEM

Subchapter 1 Purpose and Definitions

- §11-175.1-1 Purpose
- §11-175.1-2 Definitions
- §§11-175.1-3 to 11-175.1-4 (Reserved)

Subchapter 2 Advisory Bodies and Service Areas

- §11-175.1-5 State council on mental health
- §11-175.1-6 Composition of council
- §11-175.1-7 Vacancies on the council
- §11-175.1-8 Designation of service areas
- §11-175.1-9 Service area
- §11-175.1-10 Service area boards
- §11-175.1-11 Composition of service area boards
- §11-175.1-12 Vacancies on the service area board
- §§11-175.1-13 to 11-175.1-15 (Reserved)

Subchapter 3 Services

- §11-175.1-16 General requirements for service delivery
- §11-175.1-17 Continuum of services
- §11-175.1-18 Locations of service delivery
- §11-175.1-19 Eligibility criteria service elements and standards

- | | |
|------------------------------|--|
| \$11-175.1-20 | Discharge from psychiatric facility
and residential treatment
facilities |
| \$11-175.1-21 | Additional standards for all services |
| \$11-175.1-22 | Utilization management |
| \$11-175.1-23 | Monitoring, evaluation, and
accountability |
| \$11-175.1-24 to 11-175.1-27 | (Reserved) |

Subchapter 4 Planning

- | | |
|------------------------------|---------------------------|
| \$11-175.1-28 | Planning needs assessment |
| \$11-175.1-29 | Community-based planning |
| \$11-175.1-30 | Statewide planning |
| \$11-175.1-31 to 11-175.1-35 | (Reserved) |

Subchapter 5 Rights of Consumers of Mental Health and Substance Use Services

- | | |
|---------------|---|
| \$11-175.1-36 | Interpreters |
| \$11-175.1-37 | Right to a clinical record; access to the record |
| \$11-175.1-38 | Right to informed consent to nonemergency treatment |
| \$11-175.1-39 | Right of access to a grievance procedure |
| \$11-175.1-40 | Right of access to personal funds and valuables |
| \$11-175.1-41 | Civil rights |
| \$11-175.1-42 | Right of access to written rules and regulations |
| \$11-175.1-43 | Right of freedom from reprisal |
| \$11-175.1-44 | Right of privacy, respect, and personal dignity |
| \$11-175.1-45 | Right to a humane environment |
| \$11-175.1-46 | Right to be free from discrimination |
| \$11-175.1-47 | Right to a written treatment plan |
| \$11-175.1-48 | Right to participate in treatment planning |
| \$11-175.1-49 | Right to refuse nonemergency treatment |
| \$11-175.1-50 | Right to refuse treatment |

§11-175.1-51	Right to refuse participation in experimentation
§11-175.1-52	Right to choose a primary provider of psychiatric services
§11-175.1-53	Right to a qualified, competent staff
§11-175.1-54	Right to a medical examination before nonemergency treatment
§11-175.1-55	Right to knowledge of rights withheld or removed by a court or by law
§11-175.1-56	Right to physical exercise and recreation
§11-175.1-57	Right to an adequate diet
§11-175.1-58	Right to know names and titles of staff
§11-175.1-59	Right to work
§11-175.1-60	Right to have visitors
§11-175.1-61	Right to uncensored communication
§11-175.1-62	Right of freedom from seclusion and restraint
§11-175.1-63	Right to be informed of rights at time of admission
§11-175.1-64	Right to the least restrictive level of service
§11-175.1-65	Right to coordinated services
§11-175.1-66	Right to prevocational and vocational programs in residential treatment facilities
§11-175.1-67	Right to participation in operation, treatment planning, and evaluation of programs in residential treatment facilities
§11-175.1-68	Psychiatric facility emergency examination and admission rights
§11-175.1-69	Voluntary hospitalization rights
§11-175.1-70	Involuntary hospitalization rights
§11-175.1-71	Severability
§§11-175.1-72 to 11-175.1-80 (Reserved)	

Historical Note: Chapter 11-175.1 is based substantially upon chapter 11-175. [Eff 12/19/86; 12/31/88; 10/19/07; 12/16/01; R]

SUBCHAPTER 1

PURPOSE AND DEFINITIONS

§11-175.1-1 Purpose. The purposes of this chapter are to:

- (1) Establish the elements of a system of psychiatric facilities and community-based services that provides integrated mental health services for:
 - (A) Consumers with serious mental illness who are uninsured or underinsured;
 - (B) Persons who are court-ordered for evaluation;
 - (C) Persons in the care and custody of the department;
 - (D) Persons who are in crisis; and
- (2) Establish the provisions for the treatment and functional recovery for those disorders and problems in the least restrictive and most therapeutic environment possible. [Eff
] (Auth: HRS §334-9) (Imp:
HRS §§334-2, 334-3, 334-9)

§11-175.1-2 Definitions. As used in this chapter:

"Abuse" means actual or threatened physical abuse, psychological abuse, sexual abuse, or financial exploitation of a consumer by another person.

"Adult mental health division" or "AMHD" means the division of the department that provides psychiatric facilities and community-based mental health services, treatment, and recovery services pursuant to section 334-3, HRS.

"Case management services" means those services performed with consumer involvement by a single accountable individual to support the consumer and ensure that the consumer has access to and receives resources and services which can help the consumer reach and maintain an optimal level of recovery and community integration.

"Certified substance use counselor" means a person who is certified as a substance use counselor by the department.

"Child and adolescent mental health division" or "CAMHD" means the division of the department that provides preventive health, diagnostic and treatment services for emotionally disturbed children and youth, and treatment and rehabilitative services for mentally ill children and youth.

"Clinical record" means an individualized written or electronic record that documents a consumer's treatment plans, the treatment provided, response to treatment, justification for any deviation from the treatment plan, authorizations for sharing information, and any individual limitation of rights.

"Comprehensive integrated service area plan" means a design for county-based services based on available information and that contains goals related to service needs, measurable objectives, expected achievement dates, and date the plan is reviewed and revised.

"Consultation services" means providing advice or assistance on matters relating to a consumer's mental health or substance use, to other service providers.

"Consumer" means a person who is receiving or has received mental health or substance use services or self-identifies as receiving or having received the services.

"Continuing services" means services designed to provide safety-net supports to consumers.

"Council" means the state council on mental health and substance use.

"Crisis services" means time-limited services that are intensive and focused services designed to assess, stabilize, and provide linkage to treatment and other community supports, as appropriate. Crisis services are intended for individuals in mental health crisis or situational crisis for whom other mental health or substance use services are not immediately available.

"Dangerous to self" means the person recently has:

- (1) Threatened or attempted suicide or serious bodily harm; or

- (2) Behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, shelter or self-protection, so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded.

"Dangerous to others" means likely to do substantial physical or emotional injury on another, as evidenced by a recent act, attempt or threat.

"Department" means the department of health, State of Hawaii.

"Director" means the director of health, State of Hawaii, or the director's designee.

"Disaster" means an occurrence that has resulted in property damage, deaths, or injuries to a community.

"Disaster services" means services that may include counseling, debriefing, or education intended to relieve or minimize the development of psychological distress or dysfunction in persons who have experienced stress from a disaster.

"Eligibility determination" means an assessment approved by the AMHD that is sufficient to establish a diagnosis of serious mental illness and functional impairment, conducted in a standardized and timely manner for consumers who are applying for the AMHD services.

"Emergency" means a circumstance or combination of circumstances that requires immediate response, the omission of which would seriously and immediately endanger the life or safety of a consumer or others.

"Emergency treatment" means any treatment, the omission of which would seriously and immediately endanger the life or safety of a consumer or others.

"Forensic services" means specialized services provided to persons who have criminal justice involvement, including persons who are ordered to the care and custody of the department, and consumers who are on conditional release, released on conditions, or assigned to mental health court.

"Functional impairment" means impairment that seriously limits a person's ability to function independently in an appropriate and effective manner and is documented by an assigned Disability Assessment Schedule (WHODAS, 12-item interview) score of 40 or higher at the time of the eligibility assessment as provided by the Diagnostic and Statistical Manual of Mental Disorders, DSM-5.

"Imminent harm" means that the staff of a psychiatric facility or residential treatment facility has reason to believe that without intervention, a person will likely become dangerous to oneself or dangerous to others within the next forty-five days.

"Imminently dangerous to self or others" means that, without intervention, the person will likely become dangerous to self or dangerous to others within the next forty-five days.

"Information services" means informing the public of available mental health, substance use, and related services and how the services may be obtained.

"Informed consent" means a process of communication with the consumer or guardian that is documented, to ensure that the consumer has an understanding of the facts needed to make a decision that includes:

- (1) The condition to be treated;
- (2) The description of the proposed treatment;
- (3) The intended and anticipated result of the proposed treatment;
- (4) The recognized alternative treatments, including the option of not providing treatment;
- (5) The recognized material risks of serious complications or mortality associated with the proposed treatment, the recognized alternative treatments, and not undergoing any treatment; and
- (6) The benefits of the recognized alternative treatments.

"Initial treatment plan" means an individualized written design for service used during the period from admission to completion of a comprehensive treatment plan.

"Least restrictive level of service" means treatment modalities and service settings that allow the consumer the greatest possible effective exercise of liberty.

"Mental health court" means the specialty court that redirects felony defendants and offenders to community-based treatment with intensive supervision to address public safety issues while supporting recovery of those diagnosed with mental illness.

"Neglect" means actual or potential physical injury, or psychological harm, to a consumer as the result of a failure of a person to exercise the degree of care for a consumer within the scope of the person's assumed, legal, or contractual duties.

"Outreach services" means services that actively seek out persons potentially in need of mental health or substance use services in non-treatment settings, alerting them to the availability of resources and motivating them to seek help.

"Primary provider of psychiatric services" means a licensed, credentialed, and privileged staff member who is assigned primary responsibility for treatment of a consumer.

"Provider" of mental health, substance use, or other health services means:

- (1) For the state council and service area board membership, an individual whose training, purpose, or primary current activity, or identified affiliation is in the direct provision or administration of mental health, substance use, or other health services; or
- (2) Otherwise, an individual or agency providing mental health and substance use services.

"Psychiatric facility" means a public or private hospital or part thereof that provides inpatient or outpatient care, custody, diagnosis, treatment, or recovery services for consumers or persons.

"Purchase of service provider" means an individual or agency providing mental health or substance use services by contract with the department.

"Qualifying diagnosis" means one of the diagnoses as specified in section 11-175.1-19.

"Recovery services" means services that facilitate a process of change that improves consumers' health and wellness, ability to live self-directed lives, and reach their full potential.

"Referral services" means providing information to consumers about services not available through the AMHD or within the service area, or information to persons not eligible for AMHD services.

"Residential settings" means non-hospital sites where consumers live and where mental health or substance use services may be provided to those consumers.

"Residential treatment facility" means a facility that provides a structured therapeutic residential program for two or more consumers identified as needing mental health or substance use services. In addition to room and board, the program shall include treatment and recovery services within the context of a group living experience to each consumer based on each consumer's treatment plan.

"Restraint" means the use of any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a consumer to move arms, legs, body, or head freely.

"Seclusion" means the involuntary confinement of a consumer alone in a room or area from which the consumer is physically prevented from leaving.

"Service area" means a defined geographical area for which there is designated responsibility for the delivery of mental health and substance use services to persons residing in that area.

"Serious mental illness" or "SMI" means a condition that affects a person aged eighteen or older with a diagnosable mental, behavioral, or emotional disorder as specified in section 11-175.1-19 (excluding developmental and substance use disorders) of sufficient duration to cause serious functional impairment in a person's major life activities including but not limited to going to work or school, or interacting with family.

"Substance use" means a pattern of alcohol or drug use which impairs physical, social, or occupational functioning.

§11-175.1-2

"Treatment" means activities intended to alleviate or reduce the duration and severity of mental illness and substance use problems. [Eff]

(Auth: HRS §334-9) (Imp: HRS §§334-2, 334-3)

§§11-175.1-3 to 11-175.1-4 (Reserved) .

SUBCHAPTER 2

ADVISORY BODIES AND SERVICE AREAS

§11-175.1-5 State council on mental health. (a)

The state council on mental health shall serve as an advisory body to the department and the council's function shall not include any clinical, administrative, or supervisory functions of the department.

(b) The council shall:

- (1) Advise the department on statewide needs for mental health services through a review of needs assessment data by acquiring knowledge of community needs and by service area board representation;
- (2) Review the services, data, and other available non-confidential information to ensure that services are responsive, recovery oriented, and appropriate;
- (3) Advise the department on the allocation of funds and resources for mental health services;
- (4) Review and comment on the statewide comprehensive integrated service plan, and on the council's activities;
- (5) Prepare and submit an annual report on implementation of the statewide comprehensive integrated service plan to the governor and the legislature not later than twenty days

before the convening of each regular session of the legislature;

- (6) Consider issues and program direction concerning two or more service areas; and
- (7) Meet at least quarterly, conduct all council meetings in accordance with chapter 92, HRS, and submit recommendations to the department as appropriate.

(c) The council shall accept all written testimony. Oral testimony on agenda items by other than an appointed member of the council may be limited to not less than three minutes per person for each agenda item.

(d) When the department's actions are at variance with the council's written recommendations concerning the allocation of resources, statewide needs, and programs affecting two or more service areas, the department shall submit a written explanation to the council within thirty days after receipt of the recommendations.

(e) The department shall provide technical assistance including but not limited to orienting and training council members, furnishing copies of applicable statutes, administrative rules, and policies and procedures, and providing administrative support services to assist the council in the performance of its functions. [Eff] (Auth: HRS §334-9) (Imp: HRS §§334-2, 334-3, 334-10)

§11-175.1-6 Composition of council. (a) The council shall include a designated representative who is a service area board member.

(b) Members of the council shall be consumers, providers, and other residents, with the majority being consumers and other residents who are non-providers of mental health and other health services.

(c) Members of the council shall not vote on any issues in which they have a conflict of interest. Criteria for conflicts of interest shall be as established in section 84-14, HRS. [Eff

§11-175.1-6

] (Auth: HRS §334-9) (Imp: HRS
§§334-2, 334-10)

§11-175.1-7 Vacancies on the council. When a vacancy on the council occurs, the council shall:

- (1) Publish notice of the vacancy;
- (2) Solicit nominations from a variety of sources, including consumers, individual providers, agencies, and other resident sources; and
- (3) Forward through the department to the governor, the names of all persons nominated for consideration. [Eff]
(Auth: HRS §334-9) (Imp: HRS §§26-34, 334-2, 334-10)

§11-175.1-8 Designation of service areas. (a) Any changes in the number or boundary of service areas proposed by the director shall be preceded by public hearing pursuant to chapter 91, HRS.

(b) Any proposals for re-designation of number or boundary of service areas shall address the following factors:

- (1) Estimated number of persons in need of mental health services;
- (2) The optimum number of persons who can be effectively and efficiently served in any single service area;
- (3) Geographic, demographic, cultural, and social factors;
- (4) Accessibility of mental health services;
- (5) Area boundaries of other health and human services; and
- (6) Other factors that foster the effective development, delivery, and coordination of mental health services. [Eff]
(Auth: HRS §334-9) (Imp: HRS §§334-2, 334-3)

§11-175.1-9 Service area. The service area shall be the focal point for the development, delivery, and coordination of services in that area. [Eff] (Auth: HRS §334-9) (Imp: HRS §§334-2, 334-3

§11-175.1-10 Service area boards. (a) A service area board shall seek public comment, review, advise, and make recommendations to its respective service area administrator on the services in the service area and the board's function shall not include any clinical, administrative, or supervisory functions in the service area.

- (b) A service area board shall:
 - (1) Serve as a communication link to and from consumers and residents of the service area by providing liaison with residents, community leaders, and organized groups to comment and advise on unmet needs and problems;
 - (2) Bring to the attention of the service area administrator and the state council through its council representative, issues that appear to have an impact upon or may be of concern to two or more service areas;
 - (3) Review the service area's program of services, data, and other available non-confidential information to ensure that services are responsive to the needs of service area consumers and residents;
 - (4) Review general policies and procedures and make recommendations regarding the delivery of services to ensure accessibility, availability, and acceptability of services;
 - (5) Participate and make recommendations in the development and updating of the comprehensive integrated service area plan and budget;
 - (6) Assist the AMHD and the CAMHD in providing information to the community about services available through the service areas;

- (7) Perform such other functions as agreed upon by the service area board and service area administrator; and
- (8) Meet at least quarterly and conduct all board meetings in accordance with chapter 92, HRS, and submit recommendations to the service area administrator as appropriate.
- (c) The service area board shall accept all written testimony. Oral testimony on agenda items by other than an appointed member of the service area board may be limited to not less than three minutes per person for each agenda item.
- (d) When the service area administrator's actions are at variance with the service area board's written recommendations concerning the plans and budget, the service area administrator shall submit a written explanation to the service area board not later than thirty days after receipt of the recommendations.
- (e) The service area administrator shall provide orientation and training, technical assistance, and administrative support services, to assist the board in the performance of its functions. The department shall provide copies of available statutes, administrative rules, and policies and procedures to the board. [Eff
] (Auth: HRS §334-9) (Imp: HRS §§334-2, 334-3, 334-11)

§11-175.1-11 Composition of service area boards.

- (a) Members of the service area board shall be service area consumers and other persons including providers, who live or have their principal place of business in the service area and who as a group broadly represent the service area. The majority shall be consumers and other residents who are not providers of mental health services.
- (b) Members of the service area board shall not vote on any issues in which they have a conflict of interest. Criteria for conflicts of interest shall be as established in section 84-14, HRS. [Eff
] (Auth: HRS §334-9) (Imp: HRS §§334-2, 334-3, 334-4)

§11-175.1-12 Vacancies on the service area board. Whenever a service area board vacancy occurs, the service area board shall:

- (1) Publish notice of the vacancy;
- (2) Solicit nominations from a variety of sources, including consumers, individual Providers, agencies, and other resident sources; and
- (3) Nominate four persons who are interested and forward their names through the department to the governor for consideration. [Eff
] (Auth: HRS §334-9) (Imp: HRS §§26-34, 334-11)

§§11-175.1-13 to 11-175.1-15 (Reserved) .

SUBCHAPTER 3

SERVICES

§11-175.1-16 General requirements for service delivery. (a) Services to all persons shall be appropriate to their age, level of development, current situation, social, ethno-cultural, educational, religious, and economic background and shall take into account the person's relationships with family, friends, and peer groups.

(b) Each service area shall maintain an inventory of general community resources available to persons by agency name, location, contact information, services provided, type of individuals served, referral or admission procedures, and other relevant information. [Eff
] (Auth: HRS §334-9) (Imp: HRS §334-3)

§11-175.1-17 Continuum of services. Mental health and substance use services shall be delivered in a continuum which includes assessment, treatment, and recovery services. [Eff] (Auth: HRS §334-9) (Imp: HRS §334-2)

§11-175.1-18 Locations of service delivery. Services shall be accessible and delivered in non-residential and residential settings, and psychiatric facilities. [Eff] (Auth: HRS §334-9) (Imp: HRS §334-2)

§11-175.1-19 Eligibility criteria, service elements, and standards. (a) Elements of the mental health system shall include but are not limited to the services described in this section and each service area shall ensure adherence to the standards set forth in this section.

- (b) Information services shall:
 - (1) Be publically accessible and updated annually; and
 - (2) By request, be provided in other languages pursuant to chapter 321C, HRS.
- (c) Consultation services shall be provided upon request to the judiciary, educational institutions, and other federal, state, and county agencies.
- (d) Training:
 - (1) The department shall ensure that staff receive training, as appropriate, and as required by accreditation and licensing standards; and
 - (2) The department shall record training participation, including the names of each person who attended the training, date of training, and subject of training.
- (e) Outreach services shall be consistent with the statewide comprehensive integrated service area plan and budget, and coordinated with other federal, state, county, and private agencies.

(f) Eligibility determinations for services provided by the AMHD to persons shall be timely and geographically accessible within budgetary constraints. The four types of services that require eligibility determinations are crisis services, situational crisis services, disaster services, and continuing services.

(1) Eligibility criteria for mental health crisis services:

- (A) Age: Eighteen years or older;
- (B) Eligibility assessment: A brief telephone or face-to-face screening assessment to determine immediacy of needs;
- (C) Diagnosis: Exhibiting symptoms of significant psychological or behavioral distress;
- (D) Duration: No durational requirement; and
- (E) Functional level: Significant degree of functional impairment in the areas of self-protection, impulse control, or social judgment, and high risk of harm to self or others.

(2) Eligibility criteria for situational crisis services:

- (A) Age: Eighteen years or older;
- (B) Eligibility assessment: A brief telephone or face-to-face screening assessment to determine immediacy of needs;
- (C) Diagnosis: Suspected of having primary mental illness and exhibiting symptoms of significant clinical distress;
- (D) Duration: No durational requirement; and
- (E) Functional level: Some degree of functional impairment expected to worsen because of the situation.

(3) Eligibility criteria for disaster services:

- (A) Age: Eighteen years or older;
- (B) Eligibility assessment: A screening has been completed and indicates that the person is a member of the identified and designated community or social system;

- (C) Diagnosis: No mental health diagnosis is required, only the presence or risk of significant distress or dysfunction;
 - (D) Duration: Persons will be eligible for services for sixty days after initiation of those services; and
 - (E) Functional impairment: Not required.
- (4) Eligibility criteria for continuing services:
- (A) Age: Eighteen years or older;
 - (B) Eligibility assessment: Has participated in an AMHD-approved clinical eligibility assessment sufficient to establish an eligible diagnosis of mental illness and severe functional impairment;
 - (C) Eligible diagnosis: The person must be assessed as having one of the following qualifying diagnoses, as found in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders and documented by the current International Classification of Disease (ICD):
 - F10.259 Alcohol dependence with alcohol-induced psychotic disorder, unspecified
 - F11.259 Opioid dependence with opioid-induced psychotic disorder, unspecified
 - F12.259 Cannabis dependence with psychotic disorder, unspecified
 - F13.259 Sedative, hypnotic or anxiolytic dependence with sedative, hypnotic or anxiolytic-induced psychotic disorder, unspecified
 - F14.259 Cocaine dependence with cocaine-induced psychotic disorder, unspecified
 - F15.259 Other stimulant dependence with stimulant-induced

	psychotic disorder, unspecified
F16.259	Hallucinogen dependence with hallucinogen-induced psychotic disorder, unspecified
F18.259	Inhalant dependence with inhalant-induced psychotic disorder, unspecified
F19.950	Other psychoactive substance use, unspecified with psychoactive substance-induced psychotic disorder with delusions
F19.951	Other psychoactive substance use, unspecified with psychoactive substance-induced psychotic disorder with hallucinations
F19.259	Other psychoactive substance dependence with psychoactive substance-induced psychotic disorder, unspecified
F25.0	Schizoaffective disorder, bipolar type
F25.1	Schizoaffective disorder, depressive type
F25.8	Other schizoaffective disorders
F25.9	Schizoaffective disorder, unspecified
F20.0	Paranoid schizophrenia
F20.1	Disorganized schizophrenia
F20.2	Catatonic schizophrenia
F20.3	Undifferentiated schizophrenia
F20.5	Residual schizophrenia
F20.9	Schizophrenia, unspecified
F32.2	Major depressive disorder, single episode, severe without psychotic features
F32.3	Major depressive disorder, single episode, severe with psychotic features

- F33.2 Major depressive disorder, recurrent, severe without psychotic features
- F33.3 Major depressive disorder, recurrent, severe with psychotic features
- F31.13 Bipolar disorder, current episode manic without psychotic features, severe
- F31.2 Bipolar disorder, current episode maniac, severe with psychotic features
- F31.4 Bipolar disorder, current episode depressed, severe, without psychotic features
- F31.5 Bipolar disorder, current episode depressed, severe, with psychotic features
- F31.9 Bipolar disorder, unspecified
- F31.89 Other bipolar disorder
- F31.63 Bipolar disorder, current episode mixed, severe, without psychotic features
- F31.64 Bipolar disorder, current episode mixed, severe, with psychotic features
- F31.81 Bipolar II disorder
- F22 Delusional disorders
- F43.10 Post-traumatic stress disorder, unspecified
- F43.11 Post-traumatic stress disorder, acute
- F43.12 Post-traumatic stress disorder, chronic; and
- (D) Duration: The person must have demonstrated the presence of the disorder for the last twelve months, or is expected to demonstrate the disorder for the next twelve months;
- (E) Functional impairment: The person must demonstrate functional impairment that seriously limits the person's ability to function independently in an appropriate

and effective manner. This impairment is documented by an assigned World Health Organization Disability Assessment Schedule (WHODAS) score. The factors which were considered in determining the WHODAS score are documented in the eligibility assessment;

- (F) Insurance coverage: The AMHD services are intended for persons with no available health insurance covering mental health care. Persons who are determined to have access to mental health services through health insurance shall be referred to those services and shall not generally receive AMHD services;
 - (G) Means and assets: The AMHD is the safety-net provider of mental health services, and as such, shall determine if a person requesting services possesses the means or assets to obtain services privately. If it is determined that a person has the resources to obtain mental health services by other means, the person shall be referred to those resources and shall not receive AMHD services; and
 - (H) Residency status: The person must live in Hawaii and be a citizen of or have permanent resident status in the United States of America, or be a citizen of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands, pursuant to the Compact of Free Association Act of 1985 (Public Law 99-239).
- (5) The AMHD shall review a person's eligibility upon the discovery of credible information that calls into question the continuing eligibility of a person. If a person is

found ineligible, that person may appeal the decision pursuant to the AMHD appeal process.

- (6) The AMHD shall refer every person who has been evaluated for services, and who has been found not to be eligible for services to other community resources as appropriate.
- (g) Treatment shall be provided by or under the supervision of professional or certified personnel.
- (h) Recovery services shall be made accessible to persons irrespective of eligibility in subsection (f) to reduce the residual effects of mental, emotional, and co-morbid substance use disabilities.
- (i) Case management services shall be provided as deemed appropriate and in accordance with the consumers' clinical needs to enhance the natural support system, and to ensure continuity of care, continuing service responsibility, overall coordination and integration of all relevant services, and referrals to applicable agencies.
- (j) Forensic services shall be provided to persons:
- (1) Who are detained by the courts for forensic examination, or committed to a psychiatric facility under the care of the department;
 - (2) Placed on conditional release or released on conditions; or
 - (3) Who are considered eligible for AMHD services if involved in the mental health court or a jail diversion program. [Eff _____]
- (Auth: HRS §334-9) (Imp: HRS §334-3)

§11-175.1-20 Discharge from psychiatric facility and residential treatment facilities. (a) Except for those consumers for whom no additional mental health or substance use care is necessary or accepted, no psychiatric facility or residential treatment facility shall discharge any consumer without notifying the provider of mental health, substance use, or other health services who will be responsible for the major portion of planned care.

(b) Facilities shall supply written discharge treatment plans and mental health and substance use service recommendations to the consumer and the consumer's provider in a timely manner and in accordance with accreditation or licensing standards. [Eff] (Auth: HRS §334-9) (Imp: HRS §334-3)

§11-175.1-21 Additional standards for all services. (a) All providers of mental health or substance use services in the system shall:

- (1) Collaborate and cooperate to assure that the consumers' needs are met;
- (2) Meet requirements established by the department;
- (3) Establish written agreements between service agencies when two or more agencies are simultaneously providing services to a consumer and where roles need clarification;
- (4) Establish written policies and procedures for the safety of consumers and personnel.

(b) Providers of mental health or substance use services shall be linked with related services provided by other agencies, as appropriate. [Eff] (Auth: HRS §334-9) (Imp: HRS §334-3)

§11-175.1-22 Utilization management. The AMHD shall monitor the consumers' use of services through prior authorizations, continued stay authorizations, and periodic record revisions. [Eff] (Auth: HRS §334-9) (Imp: HRS §334-3)

§11-175.1-23 Monitoring, evaluation, and accountability. (a) All mental health and substance use services and programs provided directly by or under contract by the department shall be monitored and

§11-175.1-23

evaluated in accordance with contractual provisions and requirements established by the department to ensure quality services to consumers and the community, and to assess service efficiency and effectiveness.

(b) Evaluation shall recommend modifications designed to assist services and programs in meeting established standards, requirements, goals, fiscal practices, and objectives of the department. [Eff
] (Auth: HRS §334-9) (Imp: HRS §334-3)

§§11-175.1-24 to 11-175.1-27 (Reserved) .

SUBCHAPTER 4

PLANNING

§11-175.1-28 Planning needs assessment. (a) A multi-disciplinary team with knowledge of a variety of needs assessment procedures for assessing a community-based mental health and substance use services shall conduct at least one needs assessment for each service area.

(b) All planning needs assessment data shall be collected and utilized in the development of the comprehensive integrated service area plan. [Eff
] (Auth: HRS §334-9) (Imp: HRS §334-3)

§11-175.1-29 Community-based planning. (a) Each service area in conjunction with its service area board shall seek information, opinions, and recommendations from service area residents through such measures as community forums, public meetings, and formal and informal surveys.

(b) Each service area shall identify and evaluate existing public and private mental health facilities, personnel, and services available in its service area, and determine the additional facilities, personnel, and services necessary to fill the gaps and meet the mental health needs of its area. This shall include but not be limited to the services listed in section 334-3, HRS.

(c) Each service area shall describe its capacity to provide each mental health and substance use service element with respect to the minimum level of services available given its current resources, i.e., staff and budget. The minimum levels of services shall be established by a mechanism whereby residents have input into the planning, development, and review of services to meet their needs.

(d) The comprehensive integrated service area plan shall include a prioritized list of the mental health and substance use services in each service area.

(e) Each service area shall provide a plan whereby mental health and substance use services shall be accessible to residents of the service area.

(f) Each comprehensive integrated service area plan shall describe the methods by which it will:

- (1) Identify children and adults from its area who could be discharged to less restrictive settings if such settings were available; and
- (2) Identify the kinds of settings that are required to meet the needs.

(g) Each comprehensive integrated service area plan shall indicate the number of consumers to be served based on:

- (1) An estimate of the number of staff required to deliver that service or the amount of money required to purchase that service; and
- (2) An estimate of the number of units of service the average consumer will require annually.

[Eff] (Auth: HRS §334)
(Imp: HRS §334-3)

§11-175.1-30

§11-175.1-30 Statewide planning. (a) The department shall provide a framework for need-based and community-based planning including the ongoing development and coordination of a statewide service delivery system.

(b) The department shall establish mechanisms to guide the planning of mental health and substance use services, including methods for:

- (1) Allocation of resources;
 - (2) Ensuring community involvement; and
 - (3) Evaluating the effectiveness of services.
- [Eff] (Auth: HRS §334-9)
(Imp: HRS §334-3)

§§11-175.1-31 to 11-175.1-35 (Reserved).

SUBCHAPTER 5

RIGHTS OF CONSUMERS OF MENTAL HEALTH AND SUBSTANCE USE SERVICES

§11-175.1-36 Interpreters. Pursuant to chapter 321C, HRS, the AMHD and its purchase of service providers shall:

- (1) Arrange for competent and timely oral language services to limited English proficient persons who seek to access services; and
- (2) Arrange for written translation of vital documents to limited English proficient persons who seek to access services. [Eff] (Auth: HRS §334-9) (Imp: HRS §§321, 334E)

§11-175.1-37 Right to a clinical record; access to the record. (a) Each consumer admitted to a mental

health or substance use program shall have a clinical record maintained at the program. The record shall be accessible to the consumer, the consumer's legal guardian, if any, and shall include but not be limited to:

- (1) All documents relating to the consumer's status as a consumer of the program's services;
 - (2) The current individual treatment plan; and
 - (3) Documentation of any limitation of a right.
- (b) Within seventy-two hours of a request the consumer or the consumer's legal guardian shall be provided the opportunity to review and examine the consumer's clinical record in the presence of a staff member, less portions, if any, deemed by a licensed health care provider, in the exercise of professional judgment, reasonably likely to endanger the life or physical safety of the consumer or another person. If information is withheld, justification shall be documented in the clinical record and the consumer shall be informed that information was withheld, why it was withheld, and that this determination may be appealed pursuant to chapter 92F, HRS.
- (c) Within ten working days following the date of receipt of the request, the department shall provide a copy of the clinical record to the consumer unless it is exempted pursuant to subsection (c).
- (d) A full copy of the record shall be made available on request to the consumer's attorney with the consumer's written consent. A reasonable fee may be charged for the cost of photocopying.
- (e) Any consumer or the consumer's legal representative or legal guardian who believes the clinical record is not accurate, relevant, timely, or complete shall be informed that a written statement of correction or amendment may be submitted to the program administrator. If such a statement is received it shall become part of the clinical record and the administrator shall determine whether or not the correction or amendment is warranted. If a change is necessary, the record shall be corrected or amended accordingly. The consumer shall be informed whether or not a correction or amendment was made. [Eff

§11-175.1-37

] (Auth: HRS §334-9) (Imp: HRS
§334E-2, Chapter 92F)

§11-175.1-38 Right to informed consent to nonemergency treatment. (a) Mental health and substance use programs shall obtain informed consent to treatment before nonemergency treatment of a consumer commences except for a person specifically ordered by a court or an administrative panel to be involuntarily treated.

(b) A signed consent to treatment form shall be placed in the consumer's clinical record and a copy shall be given to the person providing consent.

(c) When a consumer is clinically determined to be unable to consent or not consent to nonemergency treatment because of incapacity and no guardian or attorney-in-fact for health care has been appointed, the program shall petition the court for a guardian to make treatment decisions. [Eff

] (Auth: HRS §334-9) (Imp: HRS
§334E-1)

§11-175.1-39 Right of access to a grievance procedure. (a) Mental health and substance use programs shall establish grievance policies and procedures for consumers who allege violations of legally protected rights or have complaints concerning these rights. The policies and procedures shall include mechanisms for:

- (1) Informing consumers, parents of minor consumers, attorneys-in-fact, and legal guardians, if any, upon admission, of the grievance procedure;
- (2) Informally dealing with and resolving verbal complaints;
- (3) Acknowledging and investigating written grievances;

- (4) Providing timely, appropriate, and adequate remedial action if it is determined that a right has been violated;
 - (5) Informing the complainant in writing of the progress and results of an investigation, including any remedial actions taken, within fifteen working days of receiving the complaint and every fifteen working days thereafter, until the complaint is resolved; and
 - (6) Informing the complainant about how to appeal to external advocates if still dissatisfied.
- (b) Any interested person may petition the department for a declaratory ruling involving application of a statute or rule as provided for in section 91-8, HRS.
- (c) Appeals filed by a dissatisfied complainant shall be investigated by psychiatric facility staff or designee, and the complainant shall be informed of the progress and results of the investigation, including any remedial action taken, within thirty working days of receipt of the appeal and every thirty days thereafter, until resolved.
- (d) Each service area, the Hawaii state hospital, and each provider shall designate a person as the rights advisor to consumers.
- (e) Consumers shall be informed by program administrators of the activities of advocacy agencies willing to act on behalf of consumers and how to contact such agencies and programs. [Eff
] (Auth: HRS §§321-9, 334-9) (Imp:
HRS §§334-3, 334E-2)

§11-175.1-40 Right of access to personal funds and valuables. (a) Psychiatric facilities and residential treatment facilities shall establish policies and procedures regarding the consumer's right of access to personal funds and valuables. The policies and procedures shall include mechanisms for:

- (1) Informing consumers about their responsibility for the safekeeping of their

- own money, personal effects, and other valuables which are not placed in locked storage or turned over to staff for safekeeping, and documenting in the clinical record that the consumer was informed;
- (2) Providing consumers with a complete and detailed list of belongings the consumer turns over to the facility for safekeeping; and
 - (3) Petitioning the court for a guardian prior to denial of access to money, if denial appears to be essential to prevent unreasonable and significant dissipation of assets. Use of discretionary spending money or a regular allowance received by consumers shall not be considered a dissipation of assets.
- (b) Psychiatric facilities and residential treatment facilities that provide long-term care, or treatment shall establish additional policies and procedures regarding:
- (1) Methods for consumers to deposit money in a financial institution or a safe provided for that purpose and access to their money at least weekly. When monies are kept or deposited for consumers, a written accounting of all financial transactions made on behalf of the consumer shall be provided to the consumer or the consumer's legal guardian at least quarterly;
 - (2) Voluntary access to locked storage space for each consumer or a procedure for consumers to give money and other valuables to staff for safekeeping; and
 - (3) Obtaining informed consent from the consumer or the consumer's legal guardian to permit the facility to hold and periodically provide a consumer's money to the consumer. [Eff
] (Auth: HRS §334-9) (Imp:
HRS §334-23)

§11-175.1-41 Civil rights. (a) Psychiatric facilities and residential treatment facilities shall presume that adult consumers are legally competent to make decisions unless a court has determined otherwise and shall establish policies and procedures for exercise of civil rights by consumers. The policies shall include but not be limited to:

- (1) The right to be granted, forfeit, or be denied a license, permit, privilege, or benefit pursuant to any law, except a driver's license which may be revoked or conditioned;
- (2) The right to dispose of property, execute legal documents, including a will or trust, enter into contractual relationships, and to marry, obtain a separation, divorce, or annulment;
- (3) The right to make purchases;
- (4) The right to freedom of speech;
- (5) The right to register and to vote, if eligible; and
- (6) The right to engage in religious practices.

(b) The administrator of a psychiatric facility or residential treatment facility or the administrator of a service area or the administrator's designee, shall petition the court for a finding of incapacity and appointment of a guardian to make informed decisions on behalf of a consumer if no guardian or attorney-in-fact has been appointed; and

- (1) It is clinically determined that a consumer, from whom informed consent is required for treatment, release of information, or other procedure which requires consent is incapacitated; or
- (2) If it is determined that a consumer, who by statute may exercise a civil right, should be prohibited from exercising that right.

(c) A staff member of a psychiatric facility, service area, or purchase of service provider providing mental health or substance use services to a consumer, shall not serve as guardian for the consumer. [Eff
] Auth: HRS §§321-9, 334-9) (Imp:
HRS §§334-61, 334E-2)

§11-175.1-42 Right of access to written rules and regulations. Psychiatric facilities and residential treatment facilities shall:

- (1) Establish facility rules and regulations for staff and consumers that are in compliance with federal and state laws, regulations, and administrative rules;
- (2) Inform consumers upon admission of rules and regulations with which consumers are expected to comply and guidelines which describe the appropriate behavior expected. The information shall be given orally and a written copy shall be provided to each consumer;
- (3) Inform consumers orally and in writing of any modifications of or additions to rules and regulations with which consumers are expected to comply; and
- (4) Post in an area frequented by consumers a summary of rules and regulations with which consumers are expected to comply and guidelines that describe the appropriate behavior expected. [Eff]
(Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-43 Right of freedom from reprisal.

(a) Psychiatric facilities and residential treatment facilities are prohibited from retaliating either orally or physically against consumers.

(b) Any actions by staff towards a consumer, even if the consumer considered it unpleasant, that are designed as part of a treatment program or an individualized treatment plan shall not be considered retaliation or reprisal if the program or plan has:

- (1) Approval of the treatment team; and
- (2) The consumer has provided informed consent to the treatment proposed; except no such consent shall be required for consumers ordered by a court or administrative panel to undergo the particular treatment.

(c) If a staff member files a report to law enforcement, of an assault or battery caused by a consumer, the report shall not be considered retaliation or reprisal.

(d) A request that a consumer pay for damages or destruction caused by the consumer to property not belonging to the consumer shall not be considered retaliation or reprisal. [Eff]
(Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-44 Right of privacy, respect, and personal dignity. Psychiatric facilities and residential treatment facilities shall:

- (1) Require that staff members address each consumer by the consumer's legal name or a name to which the consumer has agreed, as well as the preferred gender pronoun; Adult consumers shall not be addressed in terms which imply that they are children;
- (2) Protect consumers from abuse and neglect;
- (3) Respect the privacy of consumers and not interfere with consumers' socially appropriate behavior, as specified in facility policies and procedures;
- (4) Search a consumer's belongings or living area only upon admission, after a leave of absence, in a life-threatening emergency, or if there is reasonable cause to believe an illegal item or item prohibited by the program's rules has been hidden; except that secure facilities may also conduct random searches of consumers' belongings or living area for the consumers who are court-ordered to the care, detention, or custody of the director pursuant to chapters 334, 704, or 706, HRS;
- (5) Search belongings only in the presence of the consumer and a witness; and
- (6) Search a consumer's person only by a staff member of the gender the consumer identifies with, in private, and only if there is

§11-175.1-44

reasonable cause to believe that such a search will reveal an illegal item or an item prohibited by the program's rules. [Eff
] (Auth: HRS §321-9) (Imp:
HRS §334E-2)

§11-175.1-45 Right to a humane environment.

Psychiatric facilities and residential treatment facilities shall:

- (1) Provide consumers with a living environment that complies with department licensing provisions for housekeeping, infection control, life safety, and sanitation; and
- (2) Allow consumers to keep and display personal belongings in consumers' bed areas, provided that such items are not illegal or prohibited by facility rules. [Eff
(Auth: HRS §321-9) (Imp: HRS §334E-2)]

§11-175.1-46 Right to be free from

discrimination. Psychiatric facilities and residential treatment facilities shall establish and implement admission criteria based on objective parameters justified in the program's design, licensed maximum capacity, or a contract's scope of service, but shall not otherwise deny services to a consumer on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability. [Eff
(Imp: HRS §§334E-2, 489-3)] (Auth: HRS §321-9)

§11-175.1-47 Right to a written treatment plan.

- (a) Psychiatric facilities and residential treatment facilities shall provide each consumer with:
 - (1) An initial treatment plan before treatment begins and no later than twenty-four hours after admission; and

- (2) A comprehensive treatment plan within ten days of admission and the plan shall be re-evaluated at least every thirty days or as recommended by the treatment team.

(b) When a consumer is receiving or has received mental health or substance use treatment outside the facility, the consumer shall be provided the opportunity to invite the provider of that service to participate in developing the consumer's comprehensive treatment plan. [Eff] (Auth: HRS §§321-9, 334-9) (Imp: HRS §§334-101, 334-102, 334E-2)

§11-175.1-48 Right to participate in treatment planning. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for exercise of the right of the consumer to participate in treatment planning when the consumer's plan is developed, reviewed, or modified. Procedures shall include:

- (1) Meeting at least once with the consumer to discuss proposed treatment unless the consumer is unable or unwilling to do so; and
- (2) Providing the consumer with information sufficient to be able to participate in and consent to decisions about proposed and alternative forms of treatment, if any.
[Eff] (Auth: HRS §321-9)
(Imp: HRS §§334-102, 334E-2)

§11-175.1-49 Right to refuse nonemergency treatment. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for exercise of the right to refuse nonemergency treatment by consumers, except consumers ordered by a court or an administrative panel. The policies and procedures shall include the mechanisms for documenting the:

- (1) Specific treatment that the consumer is refusing;

- (2) Discontinuation of treatment when previously provided consent to nonemergency treatment is withdrawn. Verbally withdrawn consent shall be documented in the clinical record; and
 - (3) Discussion of any appropriate and available alternative treatment, including alternative medications, whenever informed consent to proposed treatment is refused or withdrawn.
- [Eff _____] (Auth: HRS §321-9)
(Imp: HRS §334E-2)

§11-175.1-50 Right to refuse treatment. (a) A patient, who is in the custody of the director and in a psychiatric facility, and is unwilling or unable to provide voluntary informed consent for recommended medical treatment, may be ordered to receive treatment, including the taking or application of medication, over the patient's objection through an administrative authorization process following procedural safeguards:

- (1) Unless an exception exists as provided in paragraph (b), the patient shall not be involuntarily treated before the hearing.
- (2) The patient shall be provided at least 24-hours advance written notice of the date, time, place, and purpose, of the hearing, including an explanation of the reasons for the treatment proposal.
- (3) The patient shall be informed of the right to attend the hearing, to present evidence, to receive assistance from an advisor, if requested, to cross examine witnesses, and present testimony, exhibits, and witnesses. The advisor shall be someone who understands the medical issues involved.
- (4) The administrative panel shall consist of three members with relevant clinical training and experience, appointed by the Hawaii state hospital administrator from among the relatively senior clinicians of the Division. A psychiatrist shall be at least one of the panel members and a psychiatrist shall serve

as chairperson of the panel. The other two members may be a licensed psychologist (includes psychologists exempted from licensure by HRS §465-3(a)(3)), advanced practice registered nurse with prescriptive authority and specialized mental health training, or other physician. The three panel members shall not be currently involved in the primary diagnosis or the primary psychiatric treatment of the patient and shall not include the psychiatric facility's Associate Administrator for Clinical Services or Medical Director. Relevant clinical training and experience is defined as licensure at the independent practice level and experience in an inpatient setting as a licensed clinician.

- (5) Witnesses may be called if they are reasonably available and have information relevant to the patient's condition or need for treatment. The administrative panel shall have the discretion to limit the testimony to only that which is relevant and not repetitive.
- (6) The patient's attending psychiatrist shall be present at the hearing and shall present clinical data and background information relative to the patient's need for medical treatment. The patient's attending psychiatrist shall also present the proposed treatment plan for the patient. Members of the patient's treatment team may also be called as witnesses at the hearing to provide relevant information
- (7) Minutes of the hearing shall be kept and available to the patient upon the patient's request.
- (8) The administrative panel shall determine that treatment is necessary if the panel finds:
 - (A) The patient suffers from a physical or mental disease, disorder, or defect;
 - (B) The patient is imminently dangerous to self or others;

- (C) The proposed treatment is medically appropriate; and
 - (D) After considering less intrusive alternatives, treatment is necessary to forestall the danger posed by the patient.
- (9) The administrative panel decision shall be a decision of the majority of the panel, and the majority's decision shall include a psychiatrist. The chairperson shall promptly prepare a written report regarding the panel's decision. The patient shall be provided a copy of the panel's report when completed, and informed that the patient has the right to appeal the panel's decision to the psychiatric facility's associate administrator of clinical services.
- (10) If the patient wishes to appeal the decision, the patient shall submit the request for appeal in writing to the psychiatric facility's associate administrator of clinical services after the patient receives the panel's report. If the patient appeals the panel's decision, treatment shall not be administered before the psychiatric facility's associate administrator of clinical services issues a decision on the appeal, unless an exception exists as provided in paragraph (b) of this section. The patient's appeal shall be reviewed by the psychiatric facility's associate administrator of clinical services within 48 hours of its submission. The psychiatric facility's associate administrator of clinical services shall review the panel decision to ensure that the patient received all necessary procedural protections, and that the justification for treatment is appropriate.
- (11) If no appeal is received by the associate administrator of clinical services within a reasonable time after the patient receives the panel's report, treatment may be

administered. If the psychiatric facility's associate administrator of clinical services confirms the panel's decision to receive treatment over the patient's objection, treatment may be administered.

- (12) Nothing in these rules shall prevent the patient from having the right to seek judicial review of the panel's decision.
- (13) The panel's decision to administer treatment over the patient's objection shall not exceed ninety days from the date of the panel's decision. Renewals for a period not to exceed ninety days may not be ordered unless the administrative panel determines that the criteria for treatment over the patient's objection set forth in paragraph (a)(8) continue to exist. If at the end of a renewal period the panel finds that the criteria for treatment over the patient's objection set forth in paragraph (a)(8) continue to exist and are likely to continue beyond ninety days, the administrative panel may order renewal for a period not to exceed one hundred eighty days.
- (14) This section shall apply only to patients who court ordered into the custody of the director and in a psychiatric facility. This section shall not apply to patients who have voluntarily, in writing, consented to hospitalization in a psychiatric facility.
- (15) All documentation regarding the appointment of the administrative panel, records of its deliberations (including a record of evidence presented, statements of witnesses, testimony and exhibits) findings, renewals, notice of rights to appeal, and appeal, will be maintained by the administrator of the facility.

(b) Exceptions. The psychiatric facility may treat the patient, including the taking or application of medication, over the patient's objection during a medical emergency, provided that treatment shall be administered only when the treatment constitutes an

appropriate treatment for the physical or mental disease, disorder, or defect and its symptoms, and less intrusive alternatives are not available or indicated, or would not be effective.

(c) Court orders for the purpose of restoring competency to stand trial. Paragraph (a) of this section does not apply to the involuntary administration of psychiatric medication for the sole purpose of restoring a person's competency to stand trial. Only a court of competent jurisdiction may order the involuntary administration of psychiatric medication for the sole purpose of restoring a person's competency to stand trial.[Eff]
(Auth: HRS §334A) (Imp: HRS §§334-2, 334E)

§11-175.1-51 Right to refuse participation in experimentation. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for the consumer's right to refuse participation in research and experimentation consistent with federal and state law. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-52 Right to choose a primary provider of psychiatric services. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for the consumer's right to choose a primary provider of psychiatric service, or request a change in primary provider. These policies and procedures shall include:

- (1) How the consumer may request a change of primary provider;
- (2) Limitation of the right to request a change of primary provider only when:
 - (A) The agreed upon treatment plan does not include a primary provider;
 - (B) The person chosen by a consumer is not available or does not agree; or

- (C) The change is not therapeutically appropriate.
- (3) The requested provider shall be from within the available resources of the facility; and
- (4) If the consumer desires a provider from outside the facility, the cost of that provider shall be borne by the consumer.
[Eff] (Auth: HRS §321-9)
(Imp: HRS §334E-2)

§11-175.1-53 Right to a qualified, competent staff. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for staff development and training including orientation, assessment of competencies, and appropriate trainings and continuing education. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-54 Right to a medical examination before nonemergency treatment. Consistent with accreditation and licensing standards, psychiatric facilities shall establish policies and procedures for providing for a physical examination for the consumer before nonemergency treatment is administered. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-55 Right to knowledge of rights withheld or removed by a court or by law. Whenever staff of a psychiatric facility or residential treatment facility is informed that a consumer has a right withheld or removed by a court or by law, the program shall provide information verbally and in writing to the consumer on the right which has been withheld or removed, what this means, how long this will last, and how to appeal this determination, unless

§11-175.1-55

the consumer has been provided this information orally and in writing by others. [Eff]
(Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-56 Right to physical exercise and recreation. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for the consumer's right to physical exercise and recreation. The policies and procedures shall include mechanisms for providing consumers with opportunities for regular physical exercise and recreation suited to consumers' needs and interests unless contraindicated in the consumer's initial or comprehensive treatment plan. [Eff]
(Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-57 Right to an adequate diet. Consistent with accreditation and licensing standards, psychiatric facilities and residential treatment facilities shall establish policies and procedures for meals and snacks. Policies and procedures shall also provide for a consumer's dietary requirements and restrictions due to medical conditions as assessed by a physician or dietician. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-58 Right to know names and titles of staff. Psychiatric facilities and residential treatment facilities shall provide consumers with the names and titles of staff members by requiring that all staff who have contact with consumers wear an identification badge or pin stating the staff member's first or commonly used name as recognized by their employer, and title. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-59 Right to work. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for the consumers' exercise of the right to work provided that work is available and part of the consumers' treatment plan.
[Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-60 Right to have visitors. Psychiatric facilities and residential treatment facilities shall establish policies and procedures for each consumer's exercise of the right of consumers to have visitors that include:

- (1) Daily visiting hours of not less than one hour which apply to all consumers;
- (2) The consumer's option not to see any visitor;
- (3) Visiting by the consumer's legal guardian or legal representative are not to be limited and; and
- (4) Limiting a consumer's right to have visitors only if:
 - (A) The consumer poses a danger to others;
 - (B) A visitor poses a danger to the consumer or others or is disruptive to the program;
 - (C) A visitor refuses to be searched for contraband; or
 - (D) A voluntary consumer agrees to a temporary limitation of the right as a condition of a treatment program for which informed consent has been obtained. [Eff]

(Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-61 Right to uncensored communication. Psychiatric facilities and residential treatment facilities shall have policies and procedures to clarify the rights of consumers to uncensored communication, as well as permissible limitations on

§11-175.1-61

those rights and to establish procedures for ensuring these rights. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-62 Right of freedom from seclusion and restraint. Consistent with accreditation and licensing standards, and federal and state law, psychiatric facilities and residential treatment facilities that use seclusion and restraint shall establish policies and procedures for the use of seclusion and restraint on consumers. [Eff] (Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-63 Right to be informed of rights at time of admission. (a) Psychiatric facilities and residential treatment facilities shall:

- (1) Provide the consumer and the consumer's legal guardian, or attorney-in-fact, if any, a copy of a summary of consumers' rights either on admission or no later than at the time consent to the initial treatment plan is obtained;
- (2) Place in the consumer's clinical record an acknowledgment of receipt of the summary of rights signed by the consumer or the consumer's legal guardian or attorney-in-fact;
- (3) Post a summary of consumers' rights in an area easily accessible to consumers;
- (4) Verbally explain the consumer's rights to the consumer or the consumer's legal guardian or attorney-in-fact, if any, in an understandable manner; and
- (5) Provide staff members who have contact with consumers a copy of a summary of consumers' rights, inform them of their responsibility to protect consumers' rights, and require a signed statement acknowledging receipt of the summary.

(b) Unless withheld or removed by a court or by law, no right shall be limited, restricted, removed, or denied a consumer unless:

- (1) There is a life-threatening emergency; or
- (2) There is an administrative rule which specifies the basis for limitation of the right.

(c) When a right of the consumer is individually limited:

- (1) The consumer shall be informed of the limitation, the reason for it, and its duration; and
- (2) The limitation shall be documented in the clinical record, including justification for the limitation. [Eff]
(Auth: HRS §321-9) (Imp: HRS §334E-2)

§11-175.1-64 Right to the least restrictive level of service. Psychiatric facilities and residential treatment facilities shall provide the least restrictive level of service for each consumer and shall establish policies and procedures require an assessment of the most appropriate and least restrictive level of care, and to use that assessment in discharge planning as clinically appropriate and as resources allow. [Eff] (Auth: HRS §321-9) (Imp: HRS §334-104)

§11-175.1-65 Right to coordinated services. When a consumer is admitted to a psychiatric facility or residential treatment facility and the consumer does not have a previously assigned case manager, the facility administrator or program administrator shall ensure that the consumer is offered case management services as clinically appropriate. Case management services shall include:

- (1) Discharge planning for services that may be needed subsequent to discharge and follow up

- after discharge for assistance in obtaining such services;
- (2) Assisting the consumer, as necessary, in obtaining other mental health and substance use services and in gaining access to other appropriate community services; and
 - (3) Serving as an advocate for the consumer within and outside the program. [Eff
] (Auth: HRS §334-9) (Imp:
HRS §§334-2, 334-3, 334-102)

§11-175.1-66 Right to prevocational and vocational programs in residential treatment facilities. Residential treatment facilities shall ensure that consumers have access to prevocational and vocational programs as clinically appropriate. [Eff
] (Auth: HRS §334-9) (Imp: HRS §334-102)

§11-175.1-67 Right to participation in operation, treatment planning, and evaluation of programs in residential treatment facilities. Residential treatment facilities shall establish policies and procedures to encourage the consumers' participation in the daily operation of the facility and in developing treatment and recovery planning and evaluation. [Eff
] (Auth: HRS §334-9) (Imp: HRS §334-102)

§11-175.1-68 Psychiatric facility emergency examination and admission rights. When a person is admitted or delivered for examination to a psychiatric facility, the facility shall ensure that:

- (1) The person is examined by a licensed physician without unnecessary delay;

- (2) The person receives such treatment as indicated by good medical practice; and
- (3) The person is examined by a licensed psychiatrist, psychologist, or advanced practice registered nurse to diagnose the presence or absence of a mental disorder, assess the risk that the person may be dangerous to self or others, and assess whether or not the person needs to be hospitalized. [Eff _____] (Auth: HRS §321-9) (Imp: HRS §334-59)

§11-175.1-69 Voluntary hospitalization rights.

Psychiatric facilities shall:

- (1) Not consider an application for voluntary hospitalization as lacking volition because an individual agreed to hospitalization as a result of a court proceeding;
- (2) Evaluate an individual's clinical suitability for voluntary admission based on criteria that include:
 - (A) That the individual has a condition which can benefit from inpatient treatment provided by the facility; and
 - (B) That appropriate alternatives to hospitalization were considered and adequate alternative treatment is not available or suitable;
- (3) Verbally advise the consumer or the consumer's legal representative or legal guardian of the right to terminate hospitalization at any time and the procedures to be followed. The notification shall be provided upon admission, followed up in writing, and shall be performed every six months thereafter;
- (4) When a voluntary consumer, or the consumer's legal representative or legal guardian indicates a desire for discharge of the consumer, within twenty-four hours discharge the consumer or, in accordance with section

- 334-60.1, HRS, initiate proceedings for involuntary hospitalization;
- (5) When a consumer fifteen through seventeen years of age hospitalized as a result of countersigning an application for voluntary hospitalization informs the facility of a desire to object to further hospitalization, notify the consumer's parents, legal representative or legal guardian and discharge the consumer within 24 hours unless involuntary hospitalization proceedings in accordance with section 334-60.1, HRS, have been initiated;
 - (6) When a minor consumer hospitalized as a result of countersigning an application for voluntary hospitalization becomes eighteen years of age while hospitalized, notify the consumer that application for voluntary hospitalization may be made by the consumer; if such application is not made, discharge the consumer or notify the consumer that proceedings for involuntary hospitalization have been initiated, as appropriate;
 - (7) When a request for discharge is made by a consumer's legal representative or legal guardian on behalf of a voluntary consumer and the consumer was admitted as a result of the consumer's application, discharge the consumer;
 - (8) When a voluntary consumer is determined to be no longer clinically suitable for hospitalization, discharge the consumer or, if reasons exist to delay discharge of the consumer specific to placement after discharge, with the consumer's consent or the consent of the consumer's legal representative or guardian, continue to hospitalize the consumer until placement; and
 - (9) When a voluntary consumer leaves a facility against medical advice, discharge the consumer. [Eff _____] (Auth: HRS §334-9) (Imp: HRS §334-60.1)

§11-175.1-70 Involuntary hospitalization rights.

(a) When petition has been filed alleging that a person located in the county meets the criteria for commitment psychiatric facility, and in the absence of an ex parte order, the subject of such a petition has the right to refuse to submit to medical examination and the right to a hearing.

(b) Whenever an administrator of a psychiatric facility finds that an involuntary consumer no longer meets the criteria for involuntary hospitalization, within one working day the administrator shall provide the court that ordered the hospitalization notice of intent to discharge because the consumer is no longer a proper subject for commitment and, if no objection is filed within five calendar days of service, the facility shall discharge the consumer; a consumer so discharged who is determined to be clinically suitable for voluntary hospitalization or who is in need of continued hospitalization for reasons specific to placement in the community, shall be offered the opportunity to apply for voluntary hospitalization.

[Eff] (Auth: HRS §334-9) (Imp: HRS §§334-60.7; 334-81)

§11-175.1-71 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby. [Eff] (Auth: HRS §334-9) (Imp: HRS §§334-2, 334E)

§§11-175.1-72 to 11-175.1-80 (Reserved).

DEPARTMENT OF HEALTH

The repeal of chapter 11-175, Hawaii Administrative Rules and the adoption of chapter 11-175.1, on the Summary Page dated _____, following public hearings held on September , 2019 via video conferencing at (1) Department of Health Building, Honolulu, Hawaii; (2) Hilo State Office Building, Hilo, Hawaii; (3) Kona Health Center, Kona, Hawaii; (4) Lihue State Office Building, Lihue, Hawaii; and (5) Wailuku Judiciary Building, Wailuku, Hawaii, after a public notice was published on _____, in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island.

The foregoing rulemaking action shall take effect ten days after filing with the Office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D.
Director of Health

APPROVED:

DAVID Y. IGE
Governor of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed